

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 3213/92

(11)

New Delhi, this the 15th day of May, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri R.K. Ahoja, Member (A)

In the matter of:

Ex. Head Constable Bimal Kumar
s/o Shri Moti Lal Ghosh,
r/o Qtr. No. A-39, Police Colony,
Anand Vas, P.S. Saraswati Vihar,
Shakurpur, Delhi.Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. Additional Commissioner of Police,
New Delhi Range,
Police Headquarters, MSO Building,
New Delhi.
2. The Additional Dy. Commissioner of Police,
New Delhi District, Parliament Street,
New Delhi.Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)-

1. By ^{the} order dated 27.3.1992 issued by the respondent no. 2, the applicant has been dismissed from service and the period of his suspension has been treated as not spent on duty. This order was passed on the conclusion of the departmental enquiry held against the applicant after a regular chargesheet was issued to him. The appeal filed by the applicant was dismissed by respondent no. 1 by the order dated 20th October, 1992.

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2. Aggrieved by both the above orders the applicant has come to the Tribunal assailing the punishment order, the appellate order and even the order of suspension, the chargesheet and the accompanying documents.

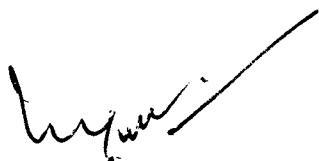
3. We have heard the learned counsel for the parties at length and have also perused the material on record.

4. During the course of arguments, the learned counsel for the applicant restricted himself to only two grounds. It is, firstly, contended by him that the impugned order of punishment has been passed by an incompetent authority, in as much as, the Additional Deputy Commissioner of Police was not competent to pass the order, as the applicant had been appointed by the then Deputy Inspector General of Police. The second ground taken by the applicant is that there was no evidence on the basis of which the enquiry officer could have returned a finding against the applicant nor could the disciplinary authority pass the order of punishment in the absence of any such evidence.

5. Taking the second ground first, we find, on a perusal of the enquiry report at page 24 of the paper book, that the solitary eye witness, namely, Shri Vikas Kapoor, who was also the complainant in the case, did not support the case of prosecution in the departmental enquiry proceedings. At page 3 of the enquiry report the enquiry officer has extracted the deposition of Sh. Vikas Kapoor which clearly reveals that the complainant

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did not identify the applicant as the Head Constable who had allegedly extorted an amount of Rs. 50/- from him. He also did not identify the policeman who had allegedly written something on the pocket diary of the witness. We further find that all the other witnesses examined during the enquiry were only formal witnesses who had no personal knowledge of the alleged incident. It appears that the enquiry officer has placed reliance on the statement attributed to Shri Vikas Kapoor which he had allegedly made during the course of the preliminary/fact-finding enquiry. The enquiry officer has made reference to the statement allegedly given by the said witness on 5.9.1990 which had been shown to him and the signatures on which were identified by him during the course of the enquiry. At the same time it is conceded that the said statement does not bear the attestation of the police officer who had recorded the deposition. Rule 15(3) of the Delhi Police (Punishment & Appeal) Rules makes such a statement given during the preliminary enquiry admissible in evidence only if the witness is not available to make his deposition during the course of the regular enquiry and that too if the deposition during the preliminary enquiry is properly verified and attested. In the instant case, as already observed, the statement during the preliminary enquiry was not verified or attested and, further, the witness was available and he did depose during the regular enquiry. Therefore, the enquiry officer was not justified in relying upon the deposition made during the preliminary enquiry.

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6. There is no other evidence connecting the applicant with the commission of the alleged act of misconduct. We are, therefore, convinced that this is a case of 'no evidence' and on this ground alone the impugned orders are liable to be quashed.))

7. Since this O.A. succeeds on the above ground, it is not necessary for us to discuss the merits of the other contention, relating to competence of the Additional Deputy Commissioner of Police to impose the penalty. It would suffice to say that on somewhat similar facts, another Bench of this Tribunal, of which one of us (Shri R.K. Aahooja) was a Member, held that an officer of the rank of Additional Deputy Commissioner was not competent to pass any punishment order against a Constable who had been appointed by an officer of the rank of Deputy Inspector General of Police under the Punjab Police Rules, 1934, as an officer equal in rank to the Deputy Inspector General of Police, which in this case would be the Additional Commissioner of Police, could alone pass such an order.

8. For the foregoing reasons, the impugned orders cannot be allowed to stand. This O.A. is accordingly allowed and the impugned order of punishment and the appellate order are quashed. The respondents are directed to re-instate the applicant forthwith, and in no case later than 15 days from the date of receipt of the copy of this order. As regards the period from the date of applicant's dismissal till his re-instatement, the applicant shall be treated to be on suspension for the aforesaid period and shall be paid arrears of subsistence

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allowance admissible under the Rules. No other back wages shall be payable. The above amount shall be paid to the applicant within a period of two months from the date of receipt of the copy of this order by the respondents.

R.K.Ahooja -

(R.K.AHOOJA)
MEMBER (A)

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T.N.Bhat

(T.N.BHAT)
MEMBER (J)